IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 195 OF 2003.

1. Rev. Fr. Vital Miranda
2. Rev. Fr. Eremita Coutinho,
   r/at Nuvem Church, Nuvem.
3. Joe D'Costa, r/o Murda
   Grande, Nuvem.
4. Joaquim Dias, r/o Murda
   Grande, Nuvem.
5. Floriano Colaco, r/o
   Nuvem.
6. Wilfred D'Sa, r/o
   Dongorim. ... Applicants.

Versus

1. Mr. Venancio Santana Fernandes,
   r/o H. No. 26, Duncolim,
   Seraulim.
2. State through Public Prosecutor,
   Panaji. ... Respondents.

Mr. C. Ferreira, Advocate for the Applicants.

Ms. F. Fernandes, Advocate for the Respondent No. 1.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent No. 2/State.

Coram : P.V. HARDAS, J.

Date : 9th October 2003.

ORAL JUDGMENT.

Heard learned counsel for the parties. With the consent of the learned counsel for the parties, this Criminal Miscellaneous Application under Section 482 of the Code of Criminal Procedure is taken up for final hearing.

2. The applicants/accused impugn the Order of the learned Judicial Magistrate, First Class, Margao, dated 13th March 2003, in Criminal Miscellaneous Application

No. 118/2001/I, recalling the Order permitting the cross-examination of the complainant. A brief reference to the facts is necessary.

3. A complaint was filed by the respondent no. 1/original complainant against the present applicants/original accused. The verification statement of the complainant was recorded and on that basis the learned trial Court had issued process. The case was posted on 9th January 2002 for evidence before charge. On that day, the learned counsel for the accused insisted before the trial Court for cross-examination of the complainant treating the verification statement as examination-in-chief. It appears that the learned trial Court permitted the learned advocate for the accused to cross-examine the complainant. Thereafter the complainant before the learned Magistrate filed an application praying therein for recall of the said Order. The learned Magistrate, by the impugned Order, has recalled the Order and has directed that the proceedings should start afresh from the stage of recording of the examination-in-chief of the complainant.

4. The verification statement of the complainant could not obviously be used as an examination-in-chief of the complainant. The complainant had a right to lead

his evidence and only thereafter be cross-examined. Without recording examination-in-chief of the complainant, he could not be tendered for cross-examination. According to me, there was a complete error of procedure followed by the learned Magistrate in allowing the cross-examination of the complainant without recording his examination-in-chief. This obvious error was corrected by the learned Magistrate by the Order impugned.

5. In view of this, I am not inclined to interfere with the Order passed by the learned trial Court. Criminal Miscellaneous Application is, accordingly, dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

ed's.